

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES WALKER, :
 : Civil Action No. 08-1378 (DMC)
Petitioner, :
 :
v. : O P I N I O N
 :
MICHELLE RICCI, et al., :
 :
Respondents. :

APPEARANCES:

James Walker, Pro Se
#235909C-4709
New Jersey State Prison
P.O. Box 861
Trenton, NJ 08625

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CAVANAUGH, District Judge


Pro se petitioner, James Walker, filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, on or about March 17, 2008. On May 13, 2008, this Court entered an opinion and order to show cause, directing Petitioner to show cause as to why his petition should not be dismissed, without prejudice, for failure to exhaust state court remedies (docket entries 2 and 3). On June 10, 2008, Petitioner filed a letter (docket entry 4) concerning exhaustion and requesting that this Court stay and abey his habeas petition pending exhaustion. On June 13, 2008, this Court ordered Respondents served with the Petition and asked Respondents to reply to Petitioner's request for a stay (docket

entry 6). On July 8, 2008, Respondents filed a letter opposing the stay (docket entry 7).

Petitioner and Respondents agree that Petitioner has exhausted all of the claims brought before this Court in Petitioner's habeas petition. However, Petitioner wishes to stay his petition and asks the Court to hold the petition in abeyance, so that he may return to state court to file a post-conviction relief motion based on ineffective assistance of counsel.

Petitioner did not plead ineffective assistance of counsel in his original habeas petition. As noted, the claims pled by Petitioner have been exhausted. Therefore, Petitioner has not presented a "mixed petition" appropriate for analysis under Rhines v. Weber. See 544 U.S. 269, 277-78 (2005) (holding that it would be abuse of discretion for district court to deny stay and dismiss mixed petition if petitioner had good cause for failure to exhaust, and his unexhausted claims are potentially meritorious).

In this case, the Court will deny Petitioner's request for a stay; however, the Court will issue an Order pursuant to Mason v. Meyers, 208 F.3d 414 (3d Cir. 2000), to give Petitioner the opportunity to file one all-inclusive § 2254 petition. An appropriate Order accompanies this Opinion.


DENNIS M. CAVANAUGH
United States District Judge

Dated: 1-27-09